

IT 95-31
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )  
                               )  SS#  
      v.                       )  
                               )  Mary Gilhooly Japlon  
XXXXXX                       )  Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest filed by XXXXX (hereinafter referred to as "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on April 18, 1991. The basis of this Notice is the determination by the Illinois Department of Revenue (hereinafter referred to as "Department") that the taxpayer failed to file an Illinois income tax return for the years ending 1987 and 1988 (hereinafter referred to as the "tax years"). The Notice proposed the assessment of tax, as well as various statutory penalties and interest.

Upon review of the file prior to the hearing date I determined that the taxpayer (via an enrolled agent) had previously submitted copies of returns for the tax years in question, as well as copies of W-2 statements which show his income, as well as Illinois Income Tax withheld, for the tax years in question. The Department ascertained that the adjusted gross income set forth on the Illinois returns was correct, and that in fact more tax was withheld and paid to the State of Illinois than was actually due.

Based upon the documentation submitted on behalf of the taxpayer, it is my recommendation that the matter be resolved in his favor without the need for hearing.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which indicates that the taxpayer owes tax and penalties to the State of Illinois in the amount of \$3,097.00.

2. The Illinois Income Tax returns filed by the taxpayer for the tax years in question, and the supporting W-2 statements, indicate that more Illinois Income Tax was withheld than was due.

Conclusions of Law:

Section 5/201(a) of the Illinois Income Tax Act (35 ILCS 5/101 et seq.) imposes a tax on every individual measured by net income for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. The Illinois Income Tax Act provides for the imposition of penalties and interest based upon the failure to file returns.

The taxpayer rebutted the Department's prima facie case of liability by way of documents submitted prior to the hearing. The documents indicate that the figures that the taxpayer assert are his correct adjusted gross income were in fact accepted by the Internal Revenue Service as accurate for the taxable years in question. Furthermore, the W-2 statements indicate that more Illinois tax was withheld and paid to the State of Illinois than was due from the taxpayer.

Therefore, based upon the foregoing, it is my recommendation that the Notice of Deficiency in this cause be cancelled.

Administrative Law Judge